

## CHAPTER NO. 875

## HOUSE BILL NO. 2789

By Representatives Fitzhugh, McMillan and Mr. Speaker Naifeh and Representatives Lois DeBerry, Scroggs, McDaniel, White, Maddox, Sands, Bone, Briley, Lewis, Kisber, Hood, Shepard, Bowers, Brooks, Kent, Newton, Brown, Pinion, Head, Bittle, Wood, Givens, Ralph Cole, Chumney, Curtiss, Phelan, Fowlkes, Vincent, Montgomery, Hagood, Brenda Turner, Ridgeway, Todd, Hargett, Pleasant, Sharp, Ulysses Jones, Dunn, Buttry, Sargent, David Davis, Black, Beavers, Stanley, Rowland, Bunch, Goins, Tindell, Fraley

Substituted for: Senate Bill No. 2919

By Senators Clabough, Haun, Crowe, Carter, Rochelle, Miller, Cooper, Burks

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 3 and Title 9, Chapter 4, relative to state government.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 9, Chapter 4, is amended by creating the following new, appropriately designated part:

9-4-5601. This part shall be known and may be cited as the "Tennessee Governmental Accountability Act of 2002."

9-4-5602. The general assembly finds and declares that accountability in program performance is vital to effective and efficient delivery of governmental services, and to maintain public confidence and trust in government. To maximize accountability, a system of strategic planning, performance-based budgeting, and performance audits should be implemented to measure the effectiveness and efficiency of governmental services. It is of paramount public importance that this system encourages full and candid participation by all agencies of state government. This system will generate information necessary for the public to be informed fully and for the general assembly to make meaningful decisions about the allocation of scarce resources in meeting vital needs.

9-4-5603. The strategic planning, performance-based budgeting, and performance review requirements of this part shall apply to all state departments, agencies, boards and commissions.

9-4-5604. For purposes of this part, the following terms shall have the following meaning unless the context requires otherwise:

(1) "Agency" or "state agency" means any unit of organization of the executive department, including any official, officer, department, board, commission, division, bureau, section, district, office, authority, committee, or council or any other unit of state government, however designated, including, without limitation, higher education. For purposes of this act, "agency" or "state agency" shall not include the governor's office, the judicial department, or the legislative department. For purposes of this act, "judicial department" means the

court system, district attorneys general conference, district public defenders conference, and the office of post-conviction defender.

(2) "Baseline data" means indicators of a state agency's current performance level, pursuant to guidelines established by the commissioner of finance and administration.

(3) "Commissioner" means the commissioner of finance and administration.

(4) "Outcome" means an indicator of the actual impact or public benefit of a program.

(5) "Output" means the actual service or product delivered by a state agency.

(6) "Performance-based program budget" means a budget that incorporates program statements and performance measures.

(7) "Performance measure" means a quantitative or qualitative indicator used to assess state agency performance, including outcome and output indicators.

(8) "Program" means a set of activities undertaken in accordance with a plan of action organized to realize identifiable goals and objectives. Such program shall be a budget unit included in the budget document for which an appropriation is provided in the general appropriations act.

(9) "Standard" means the desired level of performance of a program, measured by outcome or output.

9-4-5605.

(a) It is the legislative intent that the requirements of the Tennessee Governmental Accountability Act of 2002 constitute a new approach to the budgeting, planning, and accountability process, rather than an addition to existing procedures.

(b) The comptroller of the treasury shall have authority to employ outside consultants and entities with expertise in governmental finance and performance review for the purpose of conducting performance reviews or otherwise fulfilling his duties under this part. The performance reviews required under this part may be conducted by a private entity selected by the comptroller subject to the competitive bidding requirements of title 4, chapter 12.

9-4-5606.

(a) The commissioner of finance and administration annually shall issue instructions for the development of performance measures and standards for each program for which a state agency will submit a budget request as provided by Section 9-4-5103(b).

(b) By July 1 each year, each state agency subject to performance-based budgeting is required to submit to the commissioner of finance and administration, in a form to be specified by the commissioner, a strategic plan and proposed performance measures and standards for each program for which a budget request must be submitted pursuant to Section 9-4-5103(b). Such state agencies shall also identify the outputs produced by each program, the outcomes resulting from each program, baseline data associated with each performance measure, and performance standards. Performance measures and standards shall be reviewed by the commissioner of finance and administration, revised as deemed necessary by the commissioner of finance and administration, and included in the budget request required by Section 9-4-5103(b). In reviewing budget requests and transmitting the budget document to the general assembly in accordance with Section 9-4-5105, the governor, with the assistance of the commissioner of finance and administration, may revise, add, or delete performance measures and standards as the governor may deem necessary.

(c) Notwithstanding the programs, performance measures, and standards recommended in the budget document submitted pursuant to Section 9-4-5105, the general assembly shall have final approval of all strategic plans, performance measures and standards through the appropriations act and shall have discretion in the appropriations act, consistent with otherwise applicable requirements of general law and the constitution of Tennessee, to increase, reduce, eliminate, or otherwise alter the appropriation to a state agency.

(d) Each state agency subject to performance-based budgeting shall submit to the commissioner of finance and administration any documentation required by the commissioner regarding the validity, reliability, and appropriateness of each performance measure and standard and regarding how the strategic plan and the performance measures are used in management decision-making and other agency processes.

(e)

(1) Annually, at a time to be determined by the commissioner of finance and administration after the general appropriations act becomes law, state agencies may submit to the commissioner any adjustments to their performance measures and standards based on the amounts appropriated for each program by the general assembly. The commissioner of finance and administration shall report on the adjusted performance measures and standards to the chairmen of the senate and house finance, ways and means committees upon approval of the work program allotments required by Section 9-4-5110.

(2) At any time during the fiscal year in which a state agency, by restraining order, injunction, consent decree, settlement, or any final judgment of a court of competent jurisdiction, or by law or executive order, is required to modify its operations, or the state agency receives additional federal or other funding, the state agency may submit to the commissioner of finance and administration any necessary adjustments to its performance measures and standards.

(3) When such adjustment is made pursuant to subdivisions (1) and (2), all performance measures and standards, including any adjustments made, shall be submitted to and reviewed and revised as necessary by the commissioner of finance and administration. The commissioner shall maintain the official record of adjustments to the performance measures and standards and shall report such adjustments to the chairmen of the senate and house finance, ways and means committees.

(f) A state agency subject to performance-based budgeting shall not have the authority to amend or establish programs or performance measures but may propose a revision to the commissioner of finance and administration, who shall have authority to revise and approve programs and performance measures submitted pursuant to subdivisions (e)(1) and (e)(2) in connection with establishing original work program allotments and revisions thereto pursuant to Sections 9-4-5110 and 9-4-5112.

9-4-5607. The commissioner of finance and administration shall develop a schedule for including state agencies within performance-based budgeting and review, beginning with three (3) agencies selected for fiscal year 2004-2005. All agencies of state government shall be included in performance-based budgeting and review not later than fiscal year 2011-2012.

9-4-5608.

(a) Beginning in fiscal year 2005-2006, for agencies included in performance-based budgeting, the commissioner of finance and administration shall at least annually, and more frequently if necessary, evaluate each state agency's compliance with its strategic plan and performance-based measures and shall report to the governor and the senate and house finance, ways and means committees concerning each agency's compliance with its strategic plan and performance-based measures. Such reports shall include comments from the state agency. Such reports shall be timely furnished, and updated if necessary, for use by the senate and house finance, ways and means committees in consideration of the appropriations act.

(b) The commissioner of finance and administration's report as to each state agency's compliance may contain recommendations to the governor and the senate and house finance, ways and means committees concerning the following nonexhaustive performance measure incentives or disincentives for potential inclusion in the appropriations bill:

(1) Incentives may include, but are not limited to:

(A) Additional flexibility in budget management;

(B) Additional flexibility in salary rate and position management, notwithstanding the provisions of Title 8, Chapter 23, or any other law to the contrary;

(C) Retention of up to fifty percent (50%) of unexpended and unencumbered balances of appropriations, excluding special categories and grants in aid, that may be used for non-recurring purposes including, but not limited to, lump-sum bonuses, employee training, or productivity enhancements, including technology and other improvements; and

(D) Additional funds to be used for, but not limited to, lump-sum bonuses, employee training, or productivity enhancements, including technology and other improvements.

(2) Disincentives may include, but are not limited to:

(A) Mandatory quarterly reports to the governor on the agency's progress in meeting performance standards;

(B) Mandatory quarterly appearances before the governor to report on the agency's progress in meeting performance standards;

(C) Elimination or restructuring of the program, which may include, but not be limited to, transfer of the program or outsourcing all or a portion of the program;

(D) Reduction of total positions for a program;

(E) Restriction on or reduction of the appropriation for the program; and

(F) Reduction of managerial salaries, notwithstanding the requirements of Title 8, Chapter 23, or any other law to the contrary.

9-4-5609.

(a) In the fiscal year beginning July 1, 2003, and each year thereafter, each state agency subject to performance-based budgeting (but a year before the schedule provided by Section 9-4-5607) shall prepare a strategic plan for delivering the services and achieving the objectives required of it under the laws of the state of Tennessee and any federal program in which the state of Tennessee participates. The strategic plan shall include, but not be limited to, the following matters:

(1) The statutory and constitutional objectives of the entity;

(2) Identification of the scope of services the entity is required to provide and the best means of providing such services;

(3) Identification of any optional services the entity may provide, resources permitting, and the best means of providing such services;

(4) Means of maximizing federal or other non-state sources of revenue;

(5) Means of avoiding unnecessary costs and expenditures;

(6) Means of addressing any change in objectives or services since the previous strategic plan;

(7) Obstacles to meeting objectives and delivering services;

(8) Means of overcoming such obstacles; and

(9) Future challenges and opportunities.

(b)

(1)

(A) Each state agency shall submit its draft plan to the agency head, who shall prepare a single comprehensive plan for the agency and transmit the plan to the commissioner of finance and administration for review, modification, and approval. The Tennessee higher education commission shall submit to the commissioner a single strategic plan for all higher education budgetary units, with the advice of the university of Tennessee, the state university and community college system, and the Tennessee student assistance corporation.

(B) The comptroller of the treasury, state treasurer, secretary of state, and attorney general shall prepare their plans separately.

(C) The administrative office of the courts shall prepare a plan on behalf of the court system. Such plan shall include the court system, the district attorneys general conference, the district public defenders conference, and the office of post-conviction defender.

(D) The joint legislative services committee shall prepare a plan on behalf of the legislative department.

(2) Each strategic plan shall be submitted to the general assembly and the governor not later than September 1 of each year and shall cover the fiscal year in effect as of the date of the report. Plans for the executive branch agencies, including higher education, shall be consolidated and submitted by the commissioner of finance and administration.

(a) Each state agency shall be subject to a performance review of its activities by the comptroller of the treasury.

(b) The performance review shall include such matters as the comptroller of the treasury deems appropriate related to the manner in which the entity is delivering its services and achieving its objectives, including but not limited to:

(1) The efficient use of all state and federal resources and user fees;

(2) Additional non-state revenue or cost savings that the entity could achieve; and

(3) The extent to which the entity has achieved the objectives of its strategic plan.

(c) Each entity subject to a performance review shall cooperate fully with the comptroller of the treasury and shall timely provide all relevant documents and requested information. If any entity refuses to provide any requested documents or information, the comptroller shall include such refusal in its report, as well as the reasons given by the entity for not furnishing the documents or information.

9-4-5611.

(a) Notwithstanding the provisions of subsection (c) of this section, to achieve full and candid participation in the planning and audit process, no strategic plan or performance review, or any information generated solely for or by any such plan or review, shall be admissible in any judicial proceeding or administrative hearing.

(b) Any documents or information referenced in any such plan or audit that exist independently of the planning and review process shall not be subject to the prohibition of subsection (a). The admissibility of such documents and information shall be determined in accordance with the rules of evidence and standards otherwise applicable to any such proceeding.

(c) Each strategic plan and performance review shall be a public record under the provisions of Title 10, Chapter 7.

9-4-5612. Not later than June 30, 2003, the director of the office of legislative administration shall develop and submit to the joint legislative services committee proposed instructions for the development of performance measures for the legislative department in accordance with the criteria established in Section 9-4-5103(b). The joint legislative services committee shall review such proposed instructions, may revise or amend the proposed instructions, and shall adopt final instructions for the development of such performance measures.

9-4-5613. Not later than June 30, 2003, the judicial department, acting through the administrative office of the courts, shall identify and submit to the general assembly a list of programs that the administrative office of the courts recommends could operate

under a performance-based program budget under the criteria established in Section 9-4-5103(b). By January 1, 2004, the administrative office of the courts shall submit to the general assembly performance measures and standards for such programs. Notwithstanding any other provisions of this act, the general assembly, in consultation with the judicial branch, may develop statutory procedures for evaluating the effectiveness of such programs.

SECTION 2. Tennessee Code Annotated, Title 9, Chapter 4, is amended by adding the following new section:

9-4-5614. (a) There is hereby created the Tennessee governmental accountability commission, to be comprised of three ex officio members: the comptroller of the treasury, who shall be chairman; the executive director of the fiscal review committee, who shall be vice chairman; and the director of the office of legislative budget analysis, who shall be secretary of the commission. The members shall serve without additional compensation, except for travel expenses, to be provided in accordance with the applicable state travel regulations.

(b) The commission, at least annually, beginning in fiscal year 2005-2006, shall review the performance report submitted by the commissioner of finance and administration pursuant to section 9-4-5608. The commission, in writing, shall comment and may make recommendations to the senate and house finance, ways and means committees on the strategic plan and actual performance of agencies subject to performance-based budgeting in the previous fiscal year, on the reasonableness of performance measures and standards recommended in the budget document for those agencies subject to performance-based budgeting in the next future fiscal year, and on any other strategic plan and program performance matter the commission deems appropriate.

(c) The commission shall provide the comments required and recommendations authorized by subsection (b) in sufficient time for use by the senate and house finance, ways and means committees in considering the appropriations bill.

SECTION 3. Tennessee Code Annotated, Section 9-4-5103, is amended by designating the existing language as subsection (a) and by inserting the following new language as subsection (b):

(b) Any state agency subject to performance-based budgeting requirements under Title 9, Chapter 4, Part 56, shall include with its budget request the program performance measures and standards required by Section 9-4-5606. The following documentation shall accompany the budget request in a form to be prescribed by the commissioner of finance and administration:

(1) Identification of the customers, clients, and users of each program;

(2) The purpose of each program or the benefit derived by the customers, clients, and users of the program;

(3) Costs of each program;



(4) All sources of funding for each program, classified as appropriations from state revenues or reserves, specifying appropriations from dedicated taxes and fees, and departmental revenues by type, as determined by the commissioner of finance and administration;

(5) Information on fees collected and the adequacy of those fees in funding each program for which the fees are collected;

(6) An assessment of whether each program is conducive to performance-based budgeting; and

(7) An assessment of the time needed to develop meaningful performance measures for each program.

SECTION 4. Tennessee Code Annotated, Section 9-4-5106, is amended by inserting the following new language in subdivision (a)(3), as amended by Acts of 2002, Public Chapter 510, following the word and punctuation "chapter;":

it also shall include a performance-based program budget for all state agencies subject to performance-based budgeting, including program statements and performance measures;

SECTION 5. Tennessee Code Annotated, Section 9-4-5108, is amended by adding the following new subsection:

(e) Notwithstanding the provisions of any other law to the contrary, the appropriations bill may specify incentives or disincentives relative to performance-based budgeting.

SECTION 6. Tennessee Code Annotated, Section 9-4-5102 is amended by deleting the words "zero-based" and inserting in lieu thereof the words "performance-based program".

SECTION 7. Tennessee Code Annotated, subsections 9-4-5106(b) and 9-4-5115(b) hereby are repealed.

SECTION 8. This act shall be null and void unless appropriations necessary to implement its provisions are made in each general appropriations act for fiscal years 2002-2003, 2003-2004, and any future years in which the requirements of this act are being extended to additional state agencies. The commissioner of finance and administration shall certify to the Tennessee Code Commission any fiscal year in which appropriations necessary to implement the provisions of this act are not made in the general appropriations act.

SECTION 9. No expenditure of public funds pursuant to this act shall be made in violation of the provisions of Title VI of the Civil Rights Act of 1964, as codified in 42 United States Code 2000(d).

SECTION 10. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: July 3, 2002



JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES



JOHN S. WILDER  
SPEAKER OF THE SENATE

APPROVED this            day of            2002

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DON SUNDQUIST, GOVERNOR

Pursuant to Article III, Section 18, of the Constitution of the State of Tennessee, the Governor had House Bill No. 2789 in his possession longer than ten (10) days, so therefore the bill becomes law without the Governor's signature.